



Comptroller General
of the United States

644312

Washington, D.C. 20548

Decision

Matter of: Tecom, Inc.
File: B-257947
Date: November 29, 1994

Garreth E. Shaw, Esq., Bailey, Shaw & Deadman, P.C., for the protester.

James J. Drew, Esq., and Kenneth S. Dobis, Esq., Department of Transportation, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation provided that technical and business management were of equal importance, and combined were slightly more important than cost; agency reasonably made award to a lower technically rated, lower evaluated cost offeror rather than to the protester--a higher technically rated, higher evaluated cost offeror--where the source selection official determined that there was no significant technical difference between proposals to warrant the payment of the cost premium associated with the protester's proposal.

DECISION

Tecom, Inc. protests the award of a contract to J.A. Jones Company under request for proposals (RFP) No. DTFA03-93-R-00009, issued by the Department of Transportation for operations and maintenance support services for grounds and facilities located at the Federal Aviation Administration Technical Center, Atlantic City International Airport. The protester basically challenges the evaluation of its cost proposal and the decision to award to a lower technically rated, lower evaluated cost offeror.

We deny the protest.

The RFP, issued on September 2, 1993, contemplated the award of a cost/cost-plus-award-fee/labor hour contract for a base period and 4 option periods. The statement of work (SOW) included requirements for roads and grounds maintenance;

equipment repair and vehicle recordkeeping; plumbing, heating, ventilation, air conditioning, and fire suppression services; electrical/mechanical services; water and sewage services; plant operation services; environmental compliance; snow removal; elevator maintenance; custodial services; construction work; preventive maintenance system administration; indefinite quantity labor support; and cafeteria services.

The RFP required offerors to submit separate proposals addressing technical, business management, past performance and relevant experience, and cost considerations. The RFP provided for the evaluation of technical and business management proposals on the basis of factors that were listed in descending order of importance; past performance and experience was to be rated superior, acceptable, and unacceptable. Cost proposals were to be evaluated for realism and reasonableness.

The RFP stated that the award would be made to the offeror whose proposal provided the best value to the government considering technical, business management, and cost factors, and whose proposal demonstrated at least acceptable past performance and experience. The RFP provided that technical and business management were of equal importance, and that while technical and business management combined were slightly more important than cost, cost could become relatively more important as the difference in the combined technical and business management scores decreased between offerors. The RFP provided that past performance and relevant experience were significantly less important than either technical, business management, or cost.

Seven of the eight proposals submitted by the closing time on November 29, 1993, including those of the protester (the incumbent contractor) and Jones, were included in the competitive range. During the second week of May 1994, the agency conducted discussions with the competitive range offerors and then requested best and final offers (BAFO).

The BAFOs of the protester and Jones were evaluated as follows:

	<u>Technical</u>	<u>Management</u>	<u>Combined</u>	<u>Eval'd Cost</u>
Protester	94.46	79.75	174.21	\$27,067,476
Jones	76.90	82.75	159.65	\$26,623,610

The numerical evaluations were supported by narratives describing the strengths and weaknesses of each offeror's proposal and written explanations of cost realism adjustments.

The agency's source evaluation board (SEB), comprised of members of the technical, management, and cost evaluation teams, recommended award be made to Jones because there was "no significant difference in the technical and business scores of the acceptable offerors," and its BAFO represented the lowest cost to the government, even after upward cost realism adjustments. The source selection official (SSO), also concluding that there was "no significant difference in [the combined] technical and business management scores between acceptable offerors to justify selecting a contractor with a higher evaluated cost," determined that Jones offered the best value to the government. The SSO explained that while he considered the substantial strengths and minor weaknesses in each firm's proposal, the 7-percent difference in combined technical and business management scores between the protester and Jones did not constitute a significant difference. Since the RFP requirements for operations and maintenance support services were not highly technical, the SSO concluded that the "7 percent advantage given to [the protester] in point scores did not measure any significant superiority over J.A. Jones," and did not warrant paying \$443,866 more in evaluated costs to the protester. The award was made to Jones on July 15. This protest, challenging both the agency's cost realism analysis and the selection decision based on the conclusion that there was no significant difference between the protester's technical and business management proposals and the awardee's, followed.

The protester asserts that the cost realism analysis was defective because of certain adjustments made to its proposal and because of an adjustment that was not made to the awardee's proposal. We find no merit to the protester's arguments.

When an agency evaluates proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs of contract performance and proposed fees are not considered controlling since an offeror's estimated costs may not provide valid indications of the final actual costs that the government is required, within certain limits, to pay. See Federal Acquisition Regulation § 15.605(d); Sherikon, Inc.; Technology Management & Analysis Corp., B-256306; et al., June 7, 1994, 94-1 CPD ¶ 358. Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. Id. Because the agency is in the best position to assess cost realism and must bear the difficulties or additional expenses

resulting from a defective cost analysis, our review focuses on whether the cost evaluation was reasonable. Pacifica Servs., Inc., B-242290; B-242290.2, Apr. 8, 1991, 91-1 CPD ¶ 357.

The protester first complains that the agency improperly made upward adjustments to its subcontractor costs, based on fixed-price subcontractor quotes, and failed to advise offerors that subcontractor costs would be "normalized" through the use of the government's own "inaccurate, future estimates of costs." The RFP, however, clearly placed offerors on notice of this evaluation approach.

Amendment No. 0004, issued prior to the submission of initial proposals, stated that cost proposals would be evaluated based on the figures cited in subsection 14.4 of the SOW. Amendment No. 0005, issued prior to the submission of BAFOs, deleted subsection 14.4 as it appeared in the SOW and substituted a revised subsection 14.4, which provided in relevant part that "[t]he following are subcontract items [window washing, JC-80 maintenance, chiller maintenance, and elevator maintenance, each with a listed annual estimated amount] that should be included in the line item cost where this cost would be incurred should the contractor choose to subcontract out the work (he could use his proposed labor force if they are qualified)." Thus, not later than when amendment No. 0005 was issued offerors clearly were on notice that unless they used their own qualified labor force for these traditionally subcontracted items, government cost estimates for these items, not a contractor's fixed-price subcontractor quotes, would be used for purposes of evaluating offerors on a common basis. Any complaint the protester had regarding this approach or the estimates should have been filed not later than the closing time for receipt of BAFOs. Bid Protest Regulations, 4 C.F.R. § 21.1(a)(1) (1994). Such a complaint, filed after award, is untimely.

In any event, we note that both offerors' subcontractor costs were increased and that the record shows that with or without any adjustment, the difference in subcontractor costs between the two firms is not appreciable and does not affect the overall standing of offers.

The protester next argues that the agency made an improper upward adjustment to its proposed costs by adding back "lapse time," a percentage adjustment factor which the protester states compensates for a lapse in costs due to attrition; leave without pay; and employee replacement time. As the protester explains, when employee positions are not filled, it is not incurring costs for salaries and benefits,

thus resulting in cost savings to the government. Although employee positions are not filled, the protester states that this would have no impact on its ability to provide all required services.

The record shows that during discussions, based on its initial cost proposal, where the lapse time factor was included, the protester was advised that "'lapse time' is not clear. You are required to support the [SOW] effort for the specified period of time. A lapse in coverage is unacceptable. Therefore, this figure has been added back in for realism."

In its BAFO, the protester confirmed that it would support all RFP requirements without any lapse in coverage. The protester stated that the lapse time factor was computed based upon historical data for 1993 under its predecessor contract. However, the Defense Contract Audit Agency (DCAA) had recommended disallowing the lapse time factor, concluding that the protester did not record or track the costs associated with lapse time and could not support the proposed percentage adjustment factor. The cost evaluators, relying on the DCAA recommendation, adjusted the protester's proposed costs to account for lapse time. The cost evaluators therefore believed that corrective measures such as requiring overtime from current employees or hiring temporary employees would be necessary to avoid a lapse in the performance of the required services when personnel were on leave without pay or, for some other reason, positions were left unfilled. The cost evaluators therefore believed that the upward cost adjustment, as noted in discussions, was appropriate.

Given the agency's concerns that there be no lapse in the performance of the required services, and its belief that mandating overtime or hiring temporary employees would be necessary to avoid a lapse in employee coverage, we see nothing unreasonable with this upward adjustment to the protester's proposed costs.

The protester also argues that the agency failed to make upward adjustments to Jones's BAFO costs on the basis of understaffing. However, the protester's argument is not supported by the record. Jones's evaluated cost was less than the protester's evaluated cost primarily because Jones, vis-a-vis the protester, proposed one less supervisor and did not propose a contract administrator. Neither the technical nor business management evaluators believed that the lack of these two positions constituted a weakness in Jones's proposed approach. The cost evaluators did, however, add to Jones's BAFO direct labor and overhead costs for one equipment operator and two custodians since they believed Jones would be understaffed if those positions were

not filled. The protester does not explain why the agency was incorrect in concluding that, with these staffing adjustments, Jones's staffing was sufficient. On this record, we have no basis to question the evaluation in this regard.

The protester's challenge to the agency's selection decision is predicated on the protester's disagreement with the conclusion of the SEB and the SSO that there was "no significant difference" between the protester and Jones. The protester points to language in the summary paragraph of the technical evaluators' final report on BAFOs stating that the protester was "far superior" to the other offerors, while Jones had a "marginal probability of success." Based on these comments, the protester contends that the agency improperly determined that the firms were substantially equal.

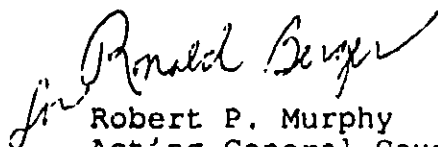
The record shows that the agency's technical evaluators found that the protester's proposal was generally superior in technical areas to Jones's proposal, and this resulted in the protester's receiving 17.5 points more than Jones. Jones was generally rated higher under business management than the protester and Jones scored 3 points more in this area. In the final SEB report, which reflected a consensus opinion of members of the technical, business management, and cost evaluation teams, it was determined that both the protester and Jones had an "overall good technical and business management proposal." The SSO reviewed the entire evaluation record including the comments the protester references, and decided that there was "no significant difference in technical and business management scores" between the two firms which justified selecting the protester's higher cost proposal since the requirements were not especially technical in nature.

An agency may properly award to a lower-priced, lower technically scored offeror if it decides that the cost premium involved in awarding to a higher-rated, higher-priced offeror is not justified given the acceptable level of technical competence available at the lower cost. General Offshore Corp., B-246824, Apr. 1, 1992, 92-1 CPD ¶ 335 (protester's 9 percent higher technical score did not represent technical superiority warranting the payment of a 1.6-percent cost premium). The determining element is not the difference in technical merit, per se, but the contracting agency's judgment concerning the significance of that difference. Id. A contracting agency may properly find that a significant difference in technical scores does not represent a corresponding difference in technical merit, and make an award based on cost. M. Rosenblatt & Sons, B-230026; B-230026.3, Apr. 26, 1988, 88-1 CPD ¶ 409. In this regard, evaluation scores are merely guides for the

selection official, who must use his judgment to determine what the technical difference between competing proposals might mean to contract performance, and who must consider what it would cost to take advantage of it. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. The relevant considerations in such a case are whether the award decision was reasonable in light of the RFP evaluation scheme, and whether the selection official adequately documented the basis for his selection. General Offshore Corp., supra.

Here, both the SLB and the SSO recognized that the protester was scored overall numerically higher than Jones, but nevertheless concluded that Tecom's proposal offered no significant advantage that warranted the extra cost associated with it. Since technical and business management combined were only slightly more important than cost, with cost becoming relatively more important as the difference in the combined technical and business management scores decreased between offerors,¹ we believe the SSO could reasonably conclude that the 7-percent difference in combined technical and business management scores favoring the protester did not warrant the payment of a 1.6-percent cost premium. Accordingly, we have no basis to object to the selection decision.

The protest is denied.


Robert P. Murphy
Act'ng General Counsel

¹Contrary to the protester's assertion, the agency did not change the basis for award from "best value" to "low, technically acceptable." Accordingly, there was no requirement to conduct discussions in this regard.